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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/038,263

10/24/2001

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05/20/2009

EXAMINER

ALEXANDER, LYLE

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

05/20/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |                                   |  |
|------------------------------|--------------------------------------|-----------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/038,263 | <b>Applicant(s)</b><br>XU, TOM C. |  |
|                              | <b>Examiner</b><br>Lyle A. Alexander | <b>Art Unit</b><br>1797           |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on 12 March 2009.

2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 105-109, 111-115 and 117-121 is/are pending in the application.

    4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 105-109, 111-115, 117-121 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All    b) ☐ Some \*    c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_.

4) ☐ Interview Summary (PTO-413)  
    Paper No(s)/Mail Date \_\_\_\_\_.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: \_\_\_\_\_.

Upon updating the search new and pertinent art has been found and is cited below.

***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 105-109 and 111 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Taylor et al. (USP 6,682,893).

Taylor et al. teach a fiber optic connected to a gel matrix that is impregnated with reagent. Paragraph[043] teach the gel matrix includes glucose oxidase and has been read on the claimed "oxidase/peroxidase enzymes." Paragraphs[84+] teach the gel is attached to a "tape" and associated with a machine readable indicia and has been read on the claimed "bonding." Paragraph[101] teaches the gel matrix is attached to an optical fiber or fiber optic rod and has been read on the claimed "optical fiber." Paragraph[129] teaches the gel pads can be deposited in an array on the optical fiber and have diameter of less than 500 microns in diameter. The teaching of the "diameter" has been read on the gel matrix being circular in shape when deposited on the end of the optical fiber. Paragraph[149] teaches using the gel matrix with glucose oxidase to detect glucose. Paragraphs[152-155] teach attachment of the gel matrix to the optical fiber by various methods that include hydrophilic/hydrophobic interactions. The claim language "... wherein said first and second ends are polished ..." is not specific to the intended physical alterations of the tip and is sufficiently broad to have been properly

read on Taylor et al. a taught optical fiber is inherently associated with a photometrical detector because why else would an optical fiber be used and how else could the results be obtained.

Claims 112-115 and 117-121 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Garcia et al. (USP 4,637,403).

Garcia et al. teach a personal glucose detector that is in the shape of a pen and has a LCD display for the glucose concentrations. The device(30) comprises an outer housing(32) and a core portion(34) disposed within the housing. An optical measurement means(50) comprises a phototransistor(52) connected to the appropriate electronics to quantify the blood glucose level are all with the housing(32). A reagent strip(94) is within the housing(32) and is contacted with needle(90) to receive a blood sample. Column 8 lines 28-33 teach the glucose is quantified colorimetrically and/or photometrically and/or conductivity/impedance. The claimed "ball point pen shaped housing" has been read on the taught device(30). The claimed "photometrical detector" has been read on the taught optical measurement means(50). The claimed "display" has been read on the taught LCD display. The claimed "optical probe" has been read on the depiction of the connected electronics in figure 5. The claimed "clip" and "button" on the taught clip(16) and button(36). The claimed "microtube" has been read on the taught needle(90). The claimed "reagent pad" has been read on the taught strip(94).

***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Tuesday and Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lyle A Alexander  
Primary Examiner  
Art Unit 1797

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